IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/02/2004

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN

W.P.No.11392 of 2002

Sri Ramasamy Naidu Vidyalayam/
The Educational Agency, owning
Sri Ramaswamy Naidu Vidyalayam
Higher Secondary School,
Lakshminaickenpalayam,
Coimbatore District
rep. by its President .. Petitioner

-Vs-

1. Rembert S.Packiam

2. The Joint Director (Higher Secondary)
of School Education and Appellate
Authority, Under Tamil Nadu Recognized
Private Schools (Regulations) Act 1973
Chennai.

3. The Tribunal Constituted under
Tamilnadu Recognized Private Schools
(Regulations) Act 1973/ The Principal
Subordinate Judge, Coimbatore. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.D.Balaraman

For Respondents : Mr.G.Annamalai
for 1st respondent
Mr.P.Gunaraj
Spl. Government Pleader
for respondents 2 and 3

:ORDER

Aggrieved by the order of the third respondent dated 31.1.2002 made in I.A.Nos.1217 and 1218 of 2001 in C.M.A.No.29 of 2001, the petitioner has

preferred this writ petition for issue of a writ of Certiorarified Mandamus to call for the entire records of the third respondent pertaining to the order dated 31.1.2002 made in I.A.Nos.1217 and 1218 of 2001 in C.M.A.No.29 of 2001, to quash the same and to consequently direct the third respondent to proceed with the appeal without insisting on the deposit sums under Section 44(4) of the Tamilnadu Recognized Private Schools (Regulation) Act, 1973 (for brevity "the Act").

2. In brief, the order dated 31.1.2001 of the petitioner/ Management dismissing the first respondent was set aside by the second respondent, by order dated 12.11.2001, for want of prior approval of the competent authority as contemplated under Section 22(1) of the Act. Challenging the order of the second respondent dated 12.11.2001, the petitioner had preferred an appeal before the third respondent/Tribunal under Section 24 of the Act, which reads as follows:

Section 24: Second appeal in case of dismissal, removal or reduction in rank or termination of appointment of teachers or other persons employed in private schools:

If the appeal under Section 23 was against the dismissal, removal or reduction in rank or the termination otherwise of the appointment of any teacher or other person employed in any private school, such teacher or other person or the educational agency aggrieved by any order made in any such appeal, may prefer an appeal against that appellate order to the Tribunal."

3. It is settled law that deposit of the arrears of pay and allowances from the date of dismissal till the date of orders of the competent authority is a condition precedent for maintainability of the very appeal before the Tribunal under Section 44 of the Act. Section 44 of the Act reads as under:-

"Section 44: Deposit with the Tribunal of pay and allowances of teachers and other persons employed in private schools in certain cases:-

(1) If the appellate authority referred to in Section 23 has, in any appeal under that section against the dismissal or removal or reduction in rank of the termination otherwise of the appointment of any teacher or other person employed in any private school, make an order restoring such teacher or other employee as such, no appeal against the order of such restoration shall be preferred to the Tribunal and no appeal (against the order of such restoration) which, under Section 2 5, stands transferred to the Tribunal shall be proceeded with by the Tribunal, unless the educational agency deposits with the Tribunal all arrears of pay and allowances due to such teacher or other person from the date of his dismissal or removal or reduction in rank or termination otherwise of his appointment up to the date of deposit, and continues to deposit the pay and allowances due to such teacher or other person until the termination of the proceedings before the Tribunal.

(2) The deposit under sub-section (1) shall be made within such time and in such manner as may be prescribed.

(3) Where there is any dispute as to the amount to be deposited under sub-section (1), the Tribunal shall, on application made to it either by the educational agency or by such teacher or other person, and after making such inquiry as it deems fit, determine summarily the amount to be so deposited.

(4) If the educational agency fails to deposit the amount as aforesaid, the Tribunal shall, unless the educational agency shows sufficient cause to the contrary, stop all further proceedings and make an order directing the educational agency to restore such teacher or other employee as such.

(5) (a) Where, as a result of any final order made by the Tribunal at the conclusion of the proceedings before it, such amount of pay and allowances as becomes due to such teacher or other person, shall be paid to him out of the amount deposited under sub-section (1).

(b) If there is any balance left of the amount deposited under subsection (1) after payment under clause (a) of the pay and allowances referred to in that clause, such balance or, where no amount becomes due as aforesaid to such teacher or other person, the whole of the amount deposited under sub-section (1), shall be returned to the educational agency."

4. A bare reading of Section 44 of the Act, in my considered opinion, does not distinguish the prior condition of depositing the arrears of pay and allowances for the maintainability of the appeal between the aided and unaided schools. On the other hand, sub-section (4) to Section 44 of the Act explicitly makes it clear that if the educational agency fails to deposit the amount as contemplated under subsections (1), (2) and (3) to Section 44 of the Act, the Tribunal shall stop all further proceedings and make an order directing the educational agency to restore such teacher as such, but however,

if the educational agency shows sufficient cause to the contrary, there is no need to stop all further proceedings or to make an order directing the educational agency to restore such teacher as such.

5. In the absence of any distinction made within Section 44 of the Act between the aided and unaided schools, the sufficient cause intended under Section 44(4) of the Act would not have any reference to the aid availed by the educational agency. Even though Mr.D.Balaraman, learned counsel for the petitioner places reliance on the decision of this Court in SECRETARY, ULAGAPPAR HIGHER SECONDARY SCHOOOL, ETC. Vs. JOINT DIRECTOR OF SCHOOL EDUCATION & ANOTHER reported in 1997 (3) LW 359, with respect, I am unable to agree with the view taken therein in the absence of any provision under Section 44 of the Act distinguishing the aided and unaided schools.

6. The Tamilnadu Recognized Private Schools (Regulation) Act, 1973 has been enacted to regulate the establishment, management, and control of private schools and provides for the regulation of the conditions of service of teachers and other persons employed in private schools.

7. It is trite law that the object of interpreting a statute or any statutory provision is to ascertain the intention of the legislature or the

authority enacting it. The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

8. In the instant case, the second respondent has clearly held that the first respondent had been dismissed by order dated 31.1.2001 of the petitioner/Management without prior approval of the competent authority as contemplated under Section 22(1) of the Act. Even though an attempt was made by Mr.D.Balaraman, learned counsel for the petitioner/Management that the petitioner/Management made a representation seeking prior approval and in view of the long silence on the part of the competent authority, the petitioner was constrained to pass the impugned order dated 31.1.2001 deeming the prior approval as sanctioned by the competent authority, the said view was deprecated by the Division Benches of this Court in (i) RUKMANI DEVI,M. Vs. CHIEF EDUCATIONAL OFFICER & 2 OTHERS reported in 1996 (II) CTC 577; and (ii) T. RAMAMOORTHY Vs. THE SECRETARY, SRI RAMAKRISHNA VIDYALAYA HIGH SCHOOL, etc. & OTHERS reported in 1998 WLR 641. That apart, though Section 22 of the Act confers power on the petitioner/Management to dismiss, discharge or terminate the service of the first respondent/ teacher, the same is not complete and absolute unless prior approval is obtained from the competent authority for the same. In other words, the management would be precluded from discharging or punishing the first respondent/teacher by way of dismissal without obtaining prior approval of competent authority, and consequently, such proposal of dismissal itself would be void and inoperative. The position is, therefore, manifest that while the management has the discretion to initiate departmental enquiry and pass an order proposing to dismiss, discharge or terminate a teacher, such proposal remains in an inchoate state till the management obtains the prior approval from the competent authority for such proposal to dismiss, discharge or terminate the service of the teacher inasmuch as, the proposal for such dismissal, discharge or termination would remain only as a proposal to put an end of the de facto relationship between the Management and the teacher till the prior approval is obtained from the competent authority for such proposal, by which, the proposal to put an end to the de facto relationship matures and results to end the de jure relationship.

9. Even assuming the petitioner preferred an appeal before the appellate authority, the appellate authority under the Act has to exercise its discretion, even while considering the sufficient cause for not depositing the amount as contemplated under Section 44 of the Act, by keeping in view the intention of the legislature in enacting the Act, but not to defeat the same.

10. In that view of the matter, the contention of the petitioner/ school that they did not avail aid with respect to the first respondent and therefore, they cannot deposit the arrears of pay and allowances due to first respondent, is contrary to Sections 22(1) and 44(4) of the Act and violative of Articles 14 and 19(g) of the Constitution of India.

11. However, at this juncture, the learned counsel for the petitioner/management seeks liberty to deposit the entire arrears of pay and allowances payable to the first respondent from the date of dismissal till date within six weeks from the date of receipt of copy of this order.

12. If that be so, suffice it to permit the petitioner/ management to deposit the entire arrears of pay and allowances payable to the first respondent from the date of dismissal till date as under:
(a) 50% within three weeks from the date of receipt of copy of this order; and
(b) balance 50% within three weeks thereon.
On such deposit, the third respondent is directed to take up the appeal on file and dispose of the same, on merits, of course after giving a fair and reasonable opportunity to the petitioner/Management as well as the first respondent,
expeditiously, in any event within a period of six months from the date of such deposit.

This writ petition is disposed of accordingly. No costs.
Consequently, W.M.P.No.15353 of 2002 is closed.

Index : Yes
Internet : Yes

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